Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter	)	
	)	
Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996	)	CC Docket No. 96-187
	)	
	)	
	)	

ORDER ON RECONSIDERATION

Adopted: August 28, 2002 **Released: September 12, 2002**

By the Commission:

I. INTRODUCTION

1. In this order, we address petitions for reconsideration filed on March 10, 1997 by AT&T Corporation (AT&T), MCI Telecommunications Corporation (MCI), and Southwestern Bell Telephone Company (SWBT) (hereinafter "the petitioners") regarding the Commission's 1997 *Streamlined Tariff Report and Order*.[1] For the reasons set forth below, we deny the petitions for reconsideration filed by AT&T, MCI, and SWBT. We also deny the requests for clarification filed by AT&T and MCI.

2. The *Streamlined Tariff Report and Order* implemented amendments to section 204(a) of the Communications Act made by the Telecommunications Act of 1996.[2] Specifically, the 1996 Act allowed local exchange carriers (LECs) to file new or revised charges, classifications, regulations or practices with the Commission on a streamlined basis.[3] The 1996 Act also required the Commission to conclude any hearings initiated

[1] S*ee Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, CC Docket No. 96-187, Report and Order, 12 FCC Rcd 2170 (1997) (*Streamlined Tariff Report and Order)*. The following parties filed comments in response to the petitions: Ameritech Operating Companies (Ameritech); Bell Atlantic and NYNEX (Bell Atlantic); BellSouth Corporation (BellSouth); Competitive Telecommunications Association (CompTel); GTE Service Corporation (GTE); Joint Response by Hyperion Telecommunications, Inc. and KMC Telecom, Inc. (Hyperion); McLeod USA Telecommunications Services, Inc. (McLeod); Sprint Corporation (Sprint); Telecommunications Resellers Association (TRA); and WorldCom, Inc. In addition, SWBT and Pacific and Nevada Bell filed a joint opposition and AT&T and MCI each filed oppositions to arguments raised in each other's petitions (hereinafter SWBT Opposition; AT&T Opposition; MCI Opposition, respectively). AT&T, MCI, and SWBT filed replies.

[2] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996 Act), *codified at* 47 U.S.C. §§ 151 *et seq.* The 1996 Act amended the Communications Act of 1934 (hereinafter "the Communications Act" or "the Act").

[3] 1996 Act, § 402(b)(1)(A)(iii); 47 U.S.C. § 204(a)(3) ("A local exchange carrier may file with the Commission a new or revised charge, classification, regulation, or practice on a streamlined basis. Any such charge, classification, regulation, or practice shall be deemed lawful and shall be

under that section within five months after the date the charge, classification, regulation, or practice subject to the hearing becomes effective.[4] These amendments apply to any charge, classification, regulation, or practice filed on or after one year after the date of enactment of the Act (*i.e.,* on or after February 8, 1997).[5] The Commission proposed rules to implement these tariff streamlining provisions[6] and released the *Streamlined Tariff Report and Order* on January 31, 1997.

II. DISCUSSION

A. "Deemed Lawful" Status of Streamlined LEC Tariff Filings

3. Section 204(a)(3) of the Act provides that LEC tariffs filed on a streamlined basis "shall be deemed lawful."[7] In the *NPRM*, the Commission considered two possible interpretations of "deemed lawful." Under the first interpretation, a tariff filed pursuant to section 204(a)(3) that becomes effective without suspension and investigation would be conclusively presumed to be a "lawful" tariff.[8] The tariff subsequently could be found unlawful in a hearing under section 205 of the Act, or in a complaint proceeding under section 208.[9] Because section 204(a)(3) requires the tariff to be "deemed lawful," however, the Commission could not award damages for the period that the tariff was in effect; it could only order tariff revisions or provide prospective relief if the LEC continued to apply the rate, term, or condition after the effective date of a Commission order finding it unlawful.[10] Under the second interpretation, a tariff filed pursuant to section 204(a)(3) that becomes effective without suspension and investigation would be presumed to be lawful, but the Commission or parties to a tariff proceeding could rebut the presumption of lawfulness.[11] Tariffs would still be subject to complaint and/or investigation, and refunds or damages could be awarded for any period that the tariff was in effect, subject to the applicable statute of limitations.[12]

4. In the *Streamlined Tariff Report and Order*, the Commission adopted the

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effective 7 days (in the case of a reduction in rates) or 15 days (in the case of an increase in rates) after the date on which it is filed with the Commission unless the Commission takes action under paragraph (1) before the end of that 7-day or 15-day period as appropriate.").

[4] 1996 Act, § 402(b)(1)(A)(i); 47 U.S.C. § 204(a)(2)(A).

[5] 1996 Act, § 402(b)(4).

[6] *See Implementation of Section 402(1)(A) of the Telecommunications Act of 1996*, CC Docket No. 96-61, Notice of Proposed Rulemaking, 11 FCC Rcd 11233 (1996) (*NPRM*).

[7] 1996 Act, § 402(a)(b)(1)(A)(iii); 47 U.S.C. § 204(a)(3).

[8] *NPRM*, 11 FCC Rcd at 11236.

[9] 47 U.S.C. §§ 205, 208.

[10] *NPRM*, 11 FCC Rcd at 11236.

[11] *NPRM*, 11 FCC Rcd at 11239.

[12] *Id.*

first alternative: a tariff filed pursuant to section 204(a)(3) that becomes effective without suspension and investigation is a "lawful" tariff.[13] In their petitions, AT&T and MCI assert that the Commission should have adopted the second alternative: a tariff filed on a streamlined basis that becomes effective without suspension and investigation is presumed lawful, but that presumption may be rebutted.[14] In support of their position, AT&T and MCI argue that the "deemed lawful" language in section 204(a)(3) is ambiguous. In its petition, SWBT asserts that "deemed lawful" creates a safe harbor in which LECs can operate without fear of an attack on their rates or other tariff provisions once the tariffs become effective.[15] As such, SWBT asserts that the Commission should reconsider the *Streamlined Tariff Report and Order* and find that, after a tariff is deemed lawful, a complainant may not file a section 208 complaint against a carrier solely because the carrier is applying the tariffed rate or practice.[16]

5. Subsequent to the filing of the petitions for reconsideration, the United States Court of Appeals for the District of Columbia Circuit considered the meaning of "deemed lawful" in section 204(a)(3) in the context of a section 208 complaint case.[17] The court focused on whether there was a distinction to be made between rates and rates of return for determining whether the deemed lawful standard was applicable to the case. In this context, however, the court specifically considered the Commission's statements in the *Streamlined Tariff Report and Order* that the term "deemed lawful" was "unambiguous" in the "consistent" interpretation of the courts.[18] That consideration led the court to say, "[t]his being so [that case law consistently found deemed lawful to be unambiguous], we find section 204(a)(3) equally unambiguous in banning refunds purportedly for rate-of-return violations."[19] Given the court's conclusion, we cannot adopt the reading urged by AT&T and MCI. We thus deny the petitions filed by AT&T and MCI with respect to this issue.

6. We also, however, deny SWBT's petition. The court's holding was limited to the question of refund liability for rates that were "deemed lawful"; it in fact acknowledged that the Commission might order prospective relief "[i]f a later reexamination shows them to be unreasonable."[20] This is consistent with the express language of section 205(a), which states that

[13] *Streamlined Tariff Report and Order*, 12 FCC Rcd at 2181-84.

[14] AT&T Petition at 2-10; MCI Petition at 3-15.

[15] SWBT Petition at 2.

[16] SWBT Petition at 2-3.

[17] *ACS of Anchorage, Inc. v. FCC*, 290 F. 3d 406, 412 (D.C. Cir. 2002).

[18] *Id.*

[19] *Id.* The court also stated that "[s]ince section 204(a)(3) deems ACS's rates to be lawful, the inquiry [into lawfulness] ends." *Id.*

[20] *Id.* at 411.

> [w]henever, after full opportunity for hearing, upon a complaint or under an order for investigation and hearing made by the Commission on its own initiative, the Commission shall be of the opinion that any charge, classification, regulation, or practice of any carrier or carriers is or will be in violation of any of the provisions of this Act, the Commission is authorized and empowered to determine and prescribe what will be the just and reasonable charge or the maximum or minimum, or maximum and minimum, charge or charges to be thereafter observed . . . .[21]

Therefore, a rate that is deemed lawful within the meaning of section 204(a)(3) may be the subject of a complaint alleging that the rate has become unjust and unreasonable, and the Commission by order may prescribe a new rate to be effective prospectively, even if the Commission can not require a carrier to make refunds. Indeed, we have previously stated that "[s]ection 205 thus expressly authorizes the Commission to prescribe rates in the context of a complaint proceeding under section 208."[22] SWBT does not take issue with the Commission's authority to prescribe rates prospectively pursuant to section 205.[23]

B. Notice Periods

7. In the *Streamlined Tariff Report and Order*, the Commission established new filing periods for petitions to suspend and reject LEC transmittals.[24] In particular, the Commission required that petitions against LEC tariff transmittals that are effective seven days from the filing must be filed within three calendar days from the date of tariff filing, and replies must be filed within two calendar days of service of the petition.

8. AT&T argues in its petition that the notice periods, in particular the seven-day notice period, adopted by the Commission will encourage LECs to submit tariffs at times that limit the ability of interested parties to review them.[25] Since these rules became effective, the Commission has implemented an electronic tariff filing system (ETFS). ETFS allows interested parties to review tariff transmittals as soon as they are filed. As a result, our experience has been that the three-day review period for LEC tariffs filed on seven days' notice is reasonable and has allowed commenters adequate time to review and respond to LEC streamlined tariff filings proposing rate reductions. Moreover, the seven-

[21] 47 U.S.C. § 205(a).

[22] *AT&T v. BTI*, EB-01-MD-001, Memorandum Opinion and Order, FCC 01-185, 2001 WL 575527 (rel. May 30, 2001), *recon.* dismissed, 16 FCC Rcd 21750 (2001).

[23] SWBT Petition at 2 ("SWBT's view does not preclude the Commission from acting under Section 205 to effectively change the law that applies to a particular tariff rate.").

[24] *Streamlined Tariff Report and Order,* 12 FCC Rcd at 2206-08.

[25] AT&T Petition at 10. AT&T argues that LECs will file tariffs with the Commission just before the close of business on Friday, thereby giving commenters one day only to obtain, review, and respond to such filings. AT&T Petition at 11. In the *Streamlined Tariff Report and Order*, the Commission considered and rejected a similar argument raised by the American Carrier Telecommunication Association. *Streamlined Tariff Report and Order,* 12 FCC Rcd at 2207-08.

day notice period is limited to those tariffs proposing only rate decreases.[26] These tariffs raise fewer regulatory concerns and have the potential to confer immediate benefits on customers. For these reasons, we deny AT&T's petition for reconsideration with respect to this issue.

C. Annual Access Tariff Filings

9. Section 69.3(h) of the Commission's rules requires price cap LECs to file annual access tariffs to be effective on July 1 of each year.[27] In connection with their annual access tariff filings, price cap LECs are required to file supporting material, usually in the form of tariff review plans (TRPs), to support the revisions to rates in the annual access tariffs.[28] These tariff filings may be made on a streamlined basis. For price cap carriers that elect to make their annual access tariff filing on a streamlined basis, section 61.49(k) of our rules requires them to submit their supporting materials, absent rate information, 90 days prior to July 1 of each year.[29] LECs subject to rate-of-return regulation must file access tariffs every two years.[30] These tariffs shall be filed with a scheduled effective date of July 1.[31] In order for these access service tariffs to be effective by the scheduled effective date of July 1st, rate-of-return carriers must comply with the Commission's notice requirements by filing these access service tariffs by June 15th.[32]

10. AT&T argues that rate-of-return LECs also should be required to file their supporting materials, without proposed rate information, 90 days prior to July 1.[33] AT&T also asserts that the Commission should require early filing of cost support data associated with any mid-term tariff filing that proposes changes to a price cap LEC's price cap indices (PCIs), based on the same reasoning used to require early filings of material supporting the annual access tariff filings.[34]

11. We reject AT&T's argument that rate-of-return LECs should be required to file supporting material associated with their annual access tariffs 90 days prior to the effective date of those tariffs. Rate-of-return LECs utilize financial data from the calendar year preceding the annual access tariff filing in the development of tariffed rates.

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[26] SWBT Opposition at 11; *Streamlined Tariff Report and Order*, 12 FCC Rcd at 2206. *See also* 47 C.F.R. 61.58(A)(2)(i)(providing the notice periods for tariffs filed pursuant to section 204(a)(3)).

[27] 47 C.F.R. § 69.3(h).

[28] *See generally* 47 C.F.R. § 61.49.

[29] 47 C.F.R. § 61.49(k).

[30] 47 C.F.R. § 69.3(a).

[31] 47 C.F.R. § 69.3(a).

[32] *See* 47 C.F.R. §§ 61.58, 69.3.

[33] AT&T Petition at 12-13.

[34] AT&T Petition at 13-14.

Many of these carriers are small and participate in either the NECA common line or traffic-sensitive pool, or both. It takes time for a carrier to prepare its annual financial data, which then must be submitted to NECA along with the carrier's demand data. NECA then reviews the submitted data and develops tariff rates based on the combined data submitted by all carriers participating in the tariff. It would be extremely difficult for the parties to prepare and submit this 90 days prior to the effective date of the annual access tariff filing. Our experience reviewing the rate-of-return LECs' annual access tariffs, including the cost support, filed on a streamlined basis has been that interested parties and the Commission's staff have been able to review adequately those filings during the notice period provided. In the event that some issues cannot be resolved prior to the effective date of the tariff, the Commission may suspend and investigate the tariff filing, thereby protecting the interests of consumers.

12. For similar reasons, we also reject AT&T's argument that price cap LECs should file supporting materials associated with mid-term tariff filings 90 days before the filings take effect. In those instances where a LEC submits streamlined mid-term tariff filings revising its PCIs, we have found that interested parties and the Commission's staff are able to review those filings during the streamlined notice periods because, unlike the annual access filing, LECs do not make simultaneous mid-term filings and the number of issues is generally limited. Moreover, we may suspend and investigate a tariff filing if we have a concern that cannot be resolved during the seven- or fifteen-day review period.

13. SWBT argues that the Commission should reconsider its decision to require price cap LECs to file their supporting material for their annual access tariff early because the early filing is contrary to the intent of the 1996 Act to streamline the procedures for LEC tariff filings.[35] We are unpersuaded by SWBT's arguments. The data filed with the TRP do not constitute rates within the meaning of the Act. The rate language does not limit the Commission's ability to request that the TRP data be filed in advance of the rate filing. The early filing of the price cap LECs' supporting material has enabled the Commission's staff to resolve most of the complex issues associated with annual access tariff filings before the tariffs become effective. Thus, we deny SWBT's petition on this issue.

D. Protective Orders

14. Parties present three main objections to the protective order adopted with the *Streamlined Tariff Report and Order*.[36] First, SWBT again argues that the standard protective order issued in the *Streamlined Tariff Report and Order* is deficient because it does not forbid the making of copies or the possession of those copies at the offices of the

[35] SWBT Petition at 5.

[36] Subsequent to the release of the *Streamlined Tariff Report and Order* and the filing of petitions for reconsideration and associated pleadings, the Commission released an order in which it reviewed its policies regarding requests for confidentiality and adopted a new protective order applicable to all confidentiality requests received by the Commission. *See Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, GC Docket No. 96-55, Report and Order, 13 FCC Rcd 24816 (1998)(*Confidentiality Report and Order*), *recon. denied*, 14 FCC Rcd 20128 (1999).

commenting party, even for information warranting the highest degree of confidentiality.[37] We addressed this issue in the *Streamlined Tariff Report and Order*. In the *Streamlined Tariff Report and Order,* we declined to bar the copying of confidential information because we found that such a bar would impose an unnecessary burden on the review of such information.[38] Because SWBT has not presented any new facts or changed circumstances with respect to these issues, we see no reason to revisit this issue.

15. Second, SWBT contends that the Commission should revise its standard protective order because the protective order does not permit LECs to withhold information that is subject to confidentiality claims by third party vendors.[39] AT&T counters that the Supreme Court has rejected the claim that a company may withhold information from the Commission that is subject to a confidentiality agreement with third parties.[40] SWBT's position runs counter to this precedent, and also to our long experience in dealing with confidential information. Historically, the Commission has withheld cost support data from public inspection only in limited circumstances, such as where it has been necessary to protect third party vendor data, and it has often made that data available subject to a protective order.[41] SWBT has not presented any evidence indicating that the protective order adopted in the *Streamlined Tariff Report and Order* is inconsistent with Commission precedent on this issue. Accordingly, we reject SWBT's claim that it has a right to withhold third party confidential information.

16. Third, MCI argues that the standards that a LEC must meet to file cost support data under confidential cover are so minimal that they place no real limits on the LEC's ability to gain confidential treatment.[42] Subsequent to the filing of MCI's petition, the Commission addressed these concerns in the *Confidentiality Report and Order* by:

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[37] SWBT Petition at 3.

[38] *Streamlined Tariff Report and Order,* 12 FCC Rcd at 2216 (declining to adopt the suggestion to bar the copying of confidential information).

[39] SWBT Petition at 3.

[40] *See* AT&T Opposition at 6 (citing *FCC v. Schreiber,* 381 U.S. 279, 298 (1965) (finding private agreements between parties not to disclose facts without the client's consent do not affect the Commission's discharge of its duties)).

[41] *See*, *e.g.*, *Southwestern Bell Telephone Company, SWBT Transmittal Nos. 2646, 2647, 2649, and 2656*, *FCC Tariff No. 73*, Order on Review, 13 FCC Rcd 3602, 3603 (1997) (finding that the fact that Southwestern Bell had negotiated confidentiality agreements with its vendors was not a sufficient basis to prevent making cost support data available to third parties subject to a protective order); *see also Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport*, CC Docket No. 94-97, Order, FCC 13 FCC Rcd 13354, 13360, 13369-13378 (Appendix A) (1998) (*Virtual Collocation Order)* (prohibiting the review of SWBT's vendor prices by persons engaged in the purchase of equipment identical, or similar, to the equipment for which prices were contained in the cost support data). *See also* Bell Atlantic Comments at 8-9 and BellSouth Opposition at 7 (noting that historically the Commission has granted confidential treatment to certain LEC information that met Freedom of Information Act requirements, such as trade secrets and confidential financial information).

[42] MCI Petition at 15-16 (arguing that LECs will be permitted to withhold cost support data as long as they meet the limited requirements of sections 0.459(b) and (c) of the Commission's rules).

(1) amending section 0.459 to require parties to explain how disclosure could result in a significant competitive harm and to describe the circumstances giving rise to the submission; and (2) modifying the procedures adopted in the *Streamlined Tariff Report and Order* to require that applicants include the supporting information required by the amended section 0.459(b).[43] We find that the measures adopted in the *Confidentiality Report and Order* respond to MCI's concerns, and we accordingly deny MCI any further relief.

17. In addition to the concerns identified above, parties present two alternatives to the current protective order. First, according to SWBT, the Commission should make protective orders unnecessary by eliminating the cost support requirements for tariffs or, at a minimum, it should adopt procedures that allow LECs to file streamlined tariff changes without requiring them to compromise the confidentiality of their sensitive information.[44] In the *Streamlined Tariff Report and Order*, the Commission considered a similar option raised by USTA and Ameritech and adopted the routine use of a standard protective order.[45] We see no reason to depart from that practice. The Commission found that routine use of a standard protective order would eliminate delay during the shortened tariff review process as well as address concerns about the protection of competitively sensitive financial data.[46] Second, MCI and TRA contend that individual Bell Operating Companies (BOCs) should not be permitted to file cost support under confidential cover until they have met the competitive requirements of section 271 of the Act, and other incumbent LECs also should have to meet an equivalent competitive test.[47] Although the Freedom of Information Act (FOIA) generally provides for release of information, it allows certain materials to be withheld from public inspection upon a sufficient showing by the party requesting confidentiality.[48] The FOIA sets forth the specific exemptions for release of information.[49] Therefore, a decision to withhold materials is determined on a

[43] *Confidentiality Report and* Order, 13 FCC Rcd at 24826-27, 24842-44 (a carrier seeking confidential treatment for its cost support information must either state that it will make its cost support information available to those signing a nondisclosure agreement, or must file a request that the cost support information be kept entirely confidential).

[44] SWBT Petition at 4.

[45] *Streamlined Tariff Report and Order*, 12 FCC Rcd at 2211-16.

[46] *Streamlined Tariff Report and Order*, 12 FCC Rcd at 2214. We note, however, that the Commission has adopted a number of measures minimizing cost support requirements. *See, e.g., Petition for Forbearance of the Independent Telephone and Telecommunications Alliance*, AAD File No. 98-43, Sixth Memorandum Opinion and Order, 14 FCC Rcd 10,840 (1999) (allowing mid-size LECs to introduce new services on a streamlined basis); *Access Charge Reform*, CC Docket No. 96-262, Fifth Report and Order, 14 FCC Rcd 14221, 14239 (1999) (*Access Charge Reform Fifth Report and Order*) (granting pricing flexibility to incumbent LECs, including the ability to introduce new services on a streamlined basis), *aff'd*, *WorldCom, Inc. v. FCC*, 238 F.3d 449 (D.C. Cir. 2001).

[47] MCI Petition at 17-18; TRA Comments at 12. Section 271 allows the BOCs to offer in-region, interLATA services upon demonstrating compliance with certain market-opening requirements set forth in that section. 47 U.S.C. § 271.

[48] 5 U.S.C. § 552(b); 47 C.F.R. §§ 0.457, 0.459.

[49] *Id.*

case-by-case basis and by an assessment of the showing made pursuant to the exceptions of the FOIA. We decline to set any preconditions to our consideration of a request for confidential treatment, as MCI and TRA request.

18. Third, MCI suggests that the Commission should give customers the option of entering into a standing protective agreement with the LECs.[50] Ameritech opposes MCI's suggestion, explaining that it is essential that those with access to confidential information be required to execute a protective agreement each time confidential information is made available in order to underscore the importance of their legal obligation to adhere to the terms of the protective agreement. The Commission, in its *Confidentiality Report and Order*, emphasized the importance of a case-by-case balancing of, *inter alia*, the type of proceeding, the relevance of the information, and the nature of the information.[51] Requiring LECs to enter into standing protective agreements would run counter to this policy. Accordingly, we reject MCI's alternative proposal and affirm the protective order that was adopted in the *Streamlined Tariff Report and Order* and modified in the *Confidentiality Report and Order*.[52]

E. Application of Tariff Streamlining Provisions Solely to Exchange Access Services

19. MCI asks the Commission to clarify that the tariff streamlining provisions of section 204(a)(3) apply to LECs only to the extent that they are providing exchange access service and, therefore, that section 204(a)(3) does not enable LECs to file interstate interexchange tariffs on a streamlined basis.[53] MCI argues that it would be anomalous if interexchange tariffs filed by dominant LECs could be "deemed lawful" when tariffs filed by non-dominant interexchange carriers (IXCs) are not eligible for such treatment.[54]

20. We deny MCI's request for clarification for the following reasons. First, although the *NPRM* sought comment on a broad range of issues related to section 204(a)(3),[55] no party commented on whether section 204(a)(3) is limited to "exchange

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[50] MCI Petition at 19. MCI proposes that the reviewing party would not be required to enter into separate protective agreements, but instead the submitting party would automatically provide a copy of any confidential information associated with each transmittal to the reviewing party's authorized representative, coincident with the filing of this information with the Commission. All other terms of the standing protective order would be the same as the Commission's model protective agreement. MCI Petition at 18-19.

[51] *See Confidentiality Report and Order,* 13 FCC Rcd at 24828; *see also FCC v. Sterner*, 381 U.S. 279, 291-92 (1965) (the Commission will engage in a balancing of the interests favoring disclosure and non-disclosure).

[52] *See Confidentiality Report and Order*, Attachment C, for a copy of the current protective order, as amended by the Commission-wide confidentiality proceeding. *Confidentiality Report and Order*, Attachment C, 13 FCC Rcd at 24867-73.

[53] MCI Petition at 19-20. WorldCom supports MCI's petition. S*ee* WorldCom Comments at 8**.**

[54] MCI Petition at 19-20.

[55] *See, e.g., NPRM,* 11 FCC Rcd at 11241-42 ("We tentatively conclude that all LEC tariff filings that involve changes to the rates, terms, and conditions of existing service offerings are eligible for streamlined treatment. We believe that this would be most consistent with the purposes of section 204(a) (3), and would simplify the

access service" or whether it extends to any interstate service offered by a "local exchange carrier."[56] In its comments in response to the *NPRM*, MCI did not suggest that LECs' interstate interexchange services fall outside the scope of section 204(a)(3).[57] Instead, this issue was raised for the first time in MCI's petition for reconsideration.

21. Moreover, the record received in response to MCI's petition contains little more than bare assertions about the scope of section 204(a)(3),[58] and the regulatory and market conditions have changed since then. In 1997, the Commission found incumbent LECs nondominant with respect to in-region, interstate interLATA services offered through a separate subsidiary, as well as for the offerings of out-of-region interexchange services.[59] In 1999, in the *Access Charge Reform Fifth Report and Order*, the Commission removed corridor and interstate intraLATA services in the interexchange basket from price cap regulation and allowed price cap LECs to file tariffs for these services on one day's notice and without cost support, although it did not find the LECs nondominant with respect to these services.[60] In 2000, the Commission's rules mandating detariffing of the interstate, domestic, interexchange services of non-dominant IXCs, including the nondominant interexchange offerings of incumbent LECs, as well as AT&T, MCI, and WorldCom, took effect.[61] Thus the regulatory regimes applicable to the provision of

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administration of the LEC tariffing process as a whole. We solicit comment on this tentative conclusion.").

[56] MCI's comments addressed whether only those tariffs involving rate increases or decreases were eligible for streamlined filing or whether streamlined treatment extended to all LEC filings involving changes in the rates, terms, and conditions of existing service offerings. MCI Comments on *NPRM* at 13-15. WorldCom did not submit comments in response to the *NPRM*.

[57] At the time it adopted the *Streamlined Tariff Report and Order*, the Commission regulated in the interexchange basket the rates that price cap LECs charge for particular interstate interexchange services. *See* 47 C.F.R. § 61.42(d)(4)(creating price cap LEC basket for interstate interexchange services that are not classified as access services for the purpose of Part 69 of the Commission's rules). *See also Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786 (1990) (*LEC Price Cap Order*). Among the services in this basket are certain interstate interLATA services, called "corridor" services, and interstate intraLATA toll services. *See LEC Price Cap Order*, 5 FCC Rcd at 6811, 6812.

[58] *See, e.g.,* CompTel Comments at 7 (section 204(a)(3) should be read to apply only to tariffs filed by a LEC in its capacity as a LEC); WorldCom Comments at 8 (agreeing with MCI that section 204(a)(3) applies to LECS only to the extent they are providing exchange access service); BellSouth Opposition at 7-8 (the statute does not contain such a limitation).

[59] *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area*, CC Docket No. 96-149, Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61,12 FCC Rcd 15756 (1997).

[60] *Access Charge Reform Fifth Report and Order*, 14 FCC Rcd at 14243-47 (granting this relief upon implementation of intra- and interLATA toll dialing parity).

[61] *See Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934*, CC Docket No. 96-61, Second Report and Order, 11 FCC Rcd 20730 (1996); Order on Reconsideration, 12 FCC Rcd 15014 (1997); Second Order on Reconsideration and Erratum, 14 FCC Rcd 6004 (1999); *Domestic, Interexchange Carrier Detariffing Order Takes Effect*, CC Docket No. 96-61, Public Notice, 16 FCC Rcd 3688 (2000); *MCI WorldCom, Inc. v. FCC*, 209 F.3d 760 (D.C. Cir. 2000).

interexchange services by local exchange carriers and IXCs have changed dramatically since MCI filed its reconsideration petition.[62] Given the sparse record on this issue and the changed regulatory circumstances, we decline to provide the clarification MCI requests at this time. If MCI believes that further clarification is necessary, it can seek further Commission action by requesting, *e.g.,* that the Commission commence a rulemaking on this issue.

III. ORDERING CLAUSES

22. Accordingly, IT IS ORDERED, pursuant to sections 1, 2, 4(i), 4(j), 201-205, and 405 of the Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 201-205, and 405, that the petitions for reconsideration filed by AT&T Corp., MCI Communications Corp., and Southwestern Bell Telephone Company ARE HEREBY DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[62] In addition, the Bell Operating Companies have received authority pursuant to section 271 of the Act to offer in-region interLATA services in a number of states. *See* 47 U.S.C. § 271.